No. 296

In the Supreme Court of the United States

OCTOBER TERM, 1944

PANHANDLE EASTERN PIPE LINE COMPANY, ILLINOIS NATURAL GAS COMPANY, AND MICHIGAN GAS TRANSMISSION CORPORATION, PETITIONERS

v.

FEDERAL POWER COMMISSION, CITY OF DETROIT, MICH., COUNTY OF WAYNE, MICH., MICHIGAN CONSOLIDATED GAS COMPANY, AND MICHIGAN PUBLIC SERVICE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

INDEX

CITATIONS

606319—44——1

In the Supreme Court of the United States

OCTOBER TERM, 1944

No. 296

PANHANDLE EASTERN PIPE LINE COMPANY, ILLINOIS NATURAL GAS COMPANY, AND MICHIGAN GAS TRANSMISSION CORPORATION, PETITIONERS

v.

FEDERAL POWER COMMISSION, CITY OF DETROIT, MICH., COUNTY OF WAYNE, MICH., MICHIGAN CONSOLIDATED GAS COMPANY, AND MICHIGAN PUBLIC SERVICE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion and order of the Federal Power Commission (R. I, 14–43)[1] are reported in 45 P. U. R. (N. S.) 203. The opinion of the Circuit Court of Appeals (R. XVI, 7198–7218) is not yet officially reported.

[1] In the record citations, roman numerals refer to the volume, Arabic numerals refer to the page.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on June 6, 1944 (R. XVI, 7219–7220). The petition for a writ of certiorari was filed on July 28, 1944. Jurisdiction of this Court is invoked under Section 19 (b) of the Natural Gas Act and Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether the Commission's interim rate order, allowing petitioners a return of 6½ per cent upon the actual investment in their properties and leaseholds in service, yielding a return of 12 percent upon petitioners' common stock and 9 per cent on their combined common stock and surplus, after payment of all necessary operating expenses, interest on the long-term debt and dividends on the preferred stock, is unjust and unreasonable.

2. Whether the Commission must, as a matter of law, receive and consider evidence of the "reproduction cost" of petitioners' physical properties and the "market value" of their leaseholds, where, petitioners, although afforded an opportunity, failed to establish the relevance of such evidence, and where the Commission, having before it accurate and reliable evidence of the actual legitimate cost of such properties and leaseholds, found the former evidence to be irrelevant.

3. Whether, in determining the amount of reduction to be made in petitioners' wholesale rates, the Commission was required to make a detailed cost allocation as between petitioners' wholesale business and direct industrial business, where the latter was found to be minor and incidental to the wholesale business, and where petitioners' president testified that a detailed allocation would be "unrealistic" and "impracticable."

STATUTES INVOLVED

The relevant provisions of the Natural Gas Act of 1938 (52 Stat. 821; 15 U. S. C. 717) are set forth in the Appendix, *infra*, pp. 18–21.

STATEMENT

The proceedings before the Commission arose out of a complaint filed February 28, 1941 by the City of Detroit and County of Wayne, Michigan, alleging that the rates and charges of petitioners, Panhandle Eastern Pipe Line Company and Michigan Gas Transmission Corporation, for natural gas sold to Michigan Consolidated Gas Company for resale for ultimate public consumption in that City and County were unjust, unreasonable, and unduly discriminatory (R. XVI, 7002). The Commission, on its own motion, instituted an investigation on May 22, 1941 of all interstate wholesale rates and charges of such petitioners, and later expanded the investigation to include.

those of petitioner, Illinois Natural Gas Company (R. XVI, 7061, 7088). Respondent Michigan Public Service Commission and respondent Michigan Consolidated Gas Company, also urging the propriety of a reduction in the challenged rates and charges, were permitted to intervene in the proceedings, which were consolidated for hearing (R. XVI, 7024, 7046, 7064). After these proceedings were initiated, petitioner Panhandle Eastern Pipe Line Company acquired all the properties of the other two petitioners, which were then dissolved (Pet. 4, n. 1).

After extensive hearings were had (R. I, 45–R. XVI, 7001) and petitioners' case was closed (R. VIII, 3975, 4011), counsel for Detroit and Wayne County, counsel for the Commission, and counsel for Michigan Consolidated Gas Company, in April 1942, filed separate motions with the Commission requesting an interim order reducing petitioners' rates by $6,800,479, $5,580,888, and $5,489,874 per annum, respectively (R. XVI, 7100, 7104, 7125). Following submission of briefs the Commission, on September 23, 1942, entered its opinion and interim order here under review, finding that petitioners' interstate wholesale rates were excessive and requiring petitioners to reduce such rates on and after November 1, 1942, so that if the reduced rates had been in effect during 1941, there

would have resulted a reduction in revenue of $5,094,384 (R. I, 15–37, 38–43).[2]

The Commission founded its order upon the $78,814,292 actual legitimate cost of petitioners' property in service on December 31, 1941; less $12,596,987 for accrued depreciation; plus $920,000 for working capital; which resulted in a rate base of $67,137,305.[3] Petitioners presented evidence purporting to show the "reproduction cost new" of their physical properties and the "market value" of their gas leaseholds, totalling $89,672,102.[4] The trial examiner, after affording petitioners a full opportunity to establish its relevance, sustained a motion to strike this evidence; and the action of the trial examiner was approved

---

[2] The Commissioner's order (R. I, 42) required:

"(A) The rates and charges made, demanded, or received by the respondents for or in connection with their transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption shall be so reduced as to reflect, when applied to respondents' 1941 transportation and sales, a reduction of not less than $5,094,384 per annum below their 1941 consolidated gross operating revenues of $17,789,573 * * *."

[3] There is no dispute as to the actual legitimate cost of petitioners' property (R. I, 21–22; Pet. 8). The amount of accrued depreciation was taken from petitioners' books as petitioners had requested in their brief before the Commission (R. I, 23). The allowance for working capital was not questioned in the petition for review in the court below (R. I, 6–12).

[4] R. I, 18–21; R. IX, 4209, 4277; R. X, 4810; R. XI, 4885; R. XII, 5455, 5531.

by the Commission in its opinion (R. I, 18–21, 488; R. II, 628, 712, 717).

The Commission allowed a 6½% return on the rate base, which return it found to be "fair and liberal." Using 1941 as the test year, the Commission allowed all operating expenses, including the annual depreciation expense, the exploration and development costs incurred by petitioners in that year as shown by their books, and Federal income taxes (R. I, 30–31).[5] With respect to increases in operating expenses which petitioners claimed would occur after 1941, including increased taxes and amortization of rate case expense, the Commission found, in the light of petitioners' earnings during the first three months of 1942, that these claimed increases in expenses would be more than offset by increased revenues (R. I, 30–33).

Petitioners' application for rehearing (R. XVI, 7141–7149) was denied by the Commission on October 30, 1942 (R. XVI, 7150). Thereafter they filed a petition for review in the circuit court of appeals. That court heard argument on May 14, 1943 (R. XVI, 7196), but deferred its decision pending this Court's disposition of *Federal Power Commission* v. *Hope Natural Gas Company*, 320 U. S. 591 (R. XVI, 7196). After this Court handed down its opinion in that case on January 3, 1944, the instant case, at the re-

[5] Two minor adjustments were made, which are not now in dispute (R. I, 30–31).

quest of the court below, was resubmitted upon supplemental briefs and argument (R. XVI, 7196, 7197), and the court then entered its opinion and judgment on June 6, 1944, affirming the Commission's order (R. XVI, 7198, 7219).

ARGUMENT

The court below properly held that the rates established by the Commission are just and reasonable, and that petitioners were not denied any rights guaranteed by the due process clause or by the Natural Gas Act. In view of this Court's decisions in *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591, and *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, we submit that this case presents no question calling for review.

I. Petitioners contend (Pet. 24–28) that the Commission's rate order allows them an inadequate return. It is a sufficient answer that, as held below, the "end result" of the Commission's order, when "viewed in its entirety," is not "unjust and unreasonable" under the standards laid down by this Court in *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U. S. 591, and *Federal Power Commission* v. *Natural Gas Pipeline Company*, 315 U. S. 575.

The Commission's rate order, allowing a 6½% return on the rate base, will permit petitioners to earn $4,363,925 upon the basis of the test year, after meeting all operating expenses, including

annual depreciation expenses, exploration and development costs, and Federal income taxes (R. I, 30). The undisputed annual cost of servicing petitioners' long-term debt is $957,786 (or 2.88 per cent), and the cost of servicing their preferred stock is $939,000 (or 5.8 per cent), a total of $1,896,786 (R. XIV, 6097; Pet. 8), which leaves $2,467,139 for petitioners' $20,184,175 of common stock, a return on such stock of 12% (R. XII, 5501; XIV, 6097).[6] Petitioners urge (Pet. 26) that they are also entitled to a return on their surplus, but they have no cause for complaint on that score even if their position is sound. For the earnings of $2,467,139 available for the common stock and surplus will provide a return of 9 percent on the combined common stock and surplus of $27,294,000. The allowed rate of return, as the Commission found (R. I, 28–30), is commensurate with returns on investments in other enterprises having corresponding risks, and is more than sufficient to insure confidence in petitioners' financial integrity.[7] There is thus no room for any contention that the re-

[6] In the *Hope* case, this Court found unobjectionable a rate order the result of which was to permit earnings of 7.8 per cent on the common stock (320 U. S. 591 at 603–604).

[7] The record shows that comparable earnings on the combined common stock and surplus of 153 of the most stable industrial companies in the country during the test year 1941 averaged 8.65% (R. XVI, 6867; VIII, 3978–3980). These industrials were characterized by petitioners' witness as "closely approximating stability that one would expect in a

turn afforded petitioners is "unjust and unreasonable." Cf. *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, at p. 586.[8]

2. The court below properly rejected petitioners' contention that they were denied due process by the Commission's approval of the trial examiner's action in striking their evidence of the "reproduction cost" of the physical properties and the "market value" of the leaseholds. While the point was not raised in the court below, it is to be observed that petitioners did not apply to the court under Section 19 (b) of the Act for leave to adduce this evidence, a procedural defect which this Court held to be fatal under cognate circumstances in *Consolidated Edison Company* v. *N. L. R. B.*, 305 U. S. 197, 226. See also *Cali-*

regulated industry" (R. VIII, 3714, 3718–3719). The Commission found that Panhandle Eastern has earned an average of 10.64% on its net investment over the past five years, and Michigan Gas an average of 8.5% during approximately the same period (R. I, 29).

[8] Nor does petitioners' experience since issuance of the Commission's order support that contention. Earnings in excess of the reduction prescribed by the Commission have been and are currently being impounded under the stay order of the court below, and are not available to petitioners for dividend or other purposes. Yet during the past year petitioners, out of revenues represented by the reduced rates, paid dividends of 8 percent on their outstanding common stock (see Standard and Poor's Corporation 1943 Annual Dividend Record, p. 112), and in June 1943 sold to the public at a premium $10,000,000 of their 10-year debentures paying interest at only 2¾ percent (see Moody's Public Utilities for June 23, 1943, p. 1147).

fornia Lumbermen's Council v. *Federal Trade Commission*, 115 F. (2d) 178, 183 (C. C. A. 9), certiorari denied, 312 U. S. 709; *Hershey Chocolate Corporation* v. *Federal Trade Commission*, 121 F. (2d) 968, 971 (C. C. A. 3); but see *Fashion Originators' Guild* v. *Federal Trade Commission*, 114 F. (2d) 80, 82 (C. C. A. 2), affirmed on other grounds, 312 U. S. 457, 467–468.

In any event, the Commission is not required, as a matter of law, to receive and consider such evidence. Cf. *Federal Power Commission* v. *Hope Natural Gas Company*, 320 U. S. 591, and *Federal Power Commission* v. *Natural Gas Pipeline Company*, 315 U. S. 575. Similar evidence, while received by the Commission in the *Hope Natural Gas Co.* case, was rejected for rate base purposes because it was considered "hypothetical and without probative value" (44 P. U. R. (N. S.) 1, 8–9). This Court, noting the Commission's action in that regard (320 U. S. at 596–597), specifically held that neither the Constitution nor the Natural Gas Act requires the use of "reproduction cost" or "fair value" evidence in arriving at the rate base, and reversed the contrary ruling of the circuit court of appeals. As this Court has stated, the "Constitution does not bind rate-making bodies to the service of any single formula or combination of formulas." *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 586.

Nor is there any basis for petitioners' contention that the effect of the Commission's action was "to prejudge a case before its hearing" (Pet. 15). The trial examiner, before he excluded this evidence, afforded petitioners several opportunities to establish its relevance (R. I, 488; R. II, 628, 712, 717). This petitioners failed to do, merely reiterating the contention, which they now advance, that the Commission was compelled, as a matter of law, to receive and consider such evidence (R. II, 714–716; Tr. 1254, 1283). In reviewing and approving the action of the trial examiner, the Commission found on the basis of the record that the excluded evidence was irrelevant in this proceeding (R. I, 18–21). This action was proper, as the lower court held (R. XVI, 7202–7208). The properties have been built within recent years, construction having begun in 1930. The cost records were complete and properly maintained and there was no need to resort to estimates. There is clearly a rational basis for the informed judgment of the Commission that these circumstances made it unnecessary to consider opinion evidence as to the reproduction cost of the property and the market value of the leaseholds (R. I, 18–21).

3. Petitioners contend that the Commission, in finding the rate base, should have made an allocation between property, capital and revenue which relate to sales at wholesale and that which relates to direct industrial sales (Pet. 18, 23–24). This

contention was properly rejected below (R. XVI, 7210–7213).

The undisputed evidence established that petitioners' property and capital are devoted to a unified business consisting primarily and almost exclusively of the production and the interstate transmission and sale of natural gas at wholesale; that the direct sales, which are made to only 19 industrial consumers, constitute a minor portion of the business; that petitioners have not constructed or provided any main line capacity for such direct industrial consumers (R. VIII, 3652); and that direct sales to them are made on an interruptible basis, only at times when the capacity in petitioners' lines is not required for service to the wholesale customers (R. VIII, 3862–3864, 3616–3617).[*] Moreover, petitioners' president testified that any attempt to make a detailed allocation between the direct industrial sales and the sales at wholesale would be "theoretical," "unrealistic" and "not practical" because of the unified nature of the business (R. VIII, 3960–3962). The Commission's finding that it was unnecessary in this case to make a detailed allocation was accordingly supported by substantial evidence and cannot be said to lack a rational basis.

[*] While direct sales in 1941 involved 13% by volume of all gas sold by petitioners, only 8 per cent of petitioners' gross revenues in 1941 was derived from direct industrial consumers and deliveries to them on the peak days of the 1941–1942 winter amounted to only 2.69 per cent of total deliveries (R. XVI, 6871–6883).

But in any event, the Commission's determination to make no allocation for the relatively minor portion of direct sales caused petitioners no damage. Petitioners have made no showing to the contrary, nor would the record support it. Petitioners' witness testified that in determining the net return from the wholesale business for rate making purposes, the cost of carrying on the wholesale business should be reduced by an amount equal to one-half of the apparent profits on the direct industrial sales during the test year, leaving a net return of some $319,000 allocable to direct industrial sales.[10] The Commission's order is in fact even more favorable to petitioners, for under it the return allocable to the direct indus-

[10] According to petitioners' witness Biddison's theoretical cost allocation, the total revenues from direct industrial sales were $1,500,527; the total expenses applicable to such sales (before Federal income taxes) were $499,699, leaving $1,000,828 available for Federal income taxes and return (R. XIII, 5947). He testified on cross-examination that, "in fairness" to the wholesale customers, one-half of the latter amount, or $500,414, should be contributed toward the reduction in the cost of carrying on the wholesale (regulated) business, i. e., that this sum was the amount allocable as the additional cost of carrying on the direct industrial (unregulated) business (R. VIII, 3857, 3872-3874). Petitioners admit that of the remaining one-half ($500,414) available for income taxes and return for the direct industrial business, $180,758 is for Federal income taxes, and the balance of $319,656 represents the return to which they claim to be entitled as profit for the direct industrial business. As stated in petitioners' main brief in the court below (p. 193): "If this suggestion [by petitioners' witness Biddison] were followed, there would be a net earning by unregulated sales of $500,414 before Federal taxes, and $319,656 after applying 1941 tax rates."

trial sales is some $26,000 more than that contended for by petitioners.[11]

There is no basis for petitioners' contention (Pet. 18–20) that the decision below conflicts with that of the Tenth Circuit Court of Appeals in *Colorado Interstate Gas Company* v. *Federal Power Commission*, 142 F. (2d) 943. As petitioners' witness recognized at the hearings in this case (R. VIII, 3869), the facts here are essentially different from those in the *Colorado* case, where "a major portion of the facilities was constructed for the express purpose of serving direct industrial customers whose sales constituted more than one-half of the volume of the system output (R. VIII, 3868–3869)."[12] Moreover, in the *Colorado* case, the Commission did make a detailed alloca-

[11] As the court below stated (R. XVI, 7212): "Under the Commission's order, the petitioners are allowed a 6½% return ($4,363,925) on their entire business. Under the method of allocation proposed by an expert witness of the Commission, $4,017,878 of the return would be attributable to sales at wholesale (subject to regulation), and $346,047 to direct industrial sales (not subject to regulation)." (See R. IX, 4002; R. XVI, 6883.) This amount is $26,391 more than the $319,656 testified to by petitioners' witness.

[12] As stated in the Commission's opinion in that case (43 P. U. R. (N. S.) at 210), one of the "primary objectives" of the business was to supply gas to the Colorado Fuel & Iron Corporation, a large industrial customer and one of the two markets which were "the essential prerequisite" of the construction of the main line. Here direct industrial sales were an incidental, subordinate and entirely minor part of petitioners' business, to which it would be concededly "unrealistic" and "not practical" to make any allocation of facilities.

tion between the wholesale and direct sales, and it was the method of allocation which was challenged on review. Since there was no issue before the Tenth Circuit Court of Appeals as to the necessity of a detailed allocation in every case, the portion of the court's opinion on which petitioners here rely was dictum.

There is no merit in the implication in the petition (Pet. 7) that the absence of a detailed allocation results in a regulation of the rates charged by petitioners for direct sales to industrial customers. The Commission's order, by its terms, is limited to a reduction of petitioners' interstate wholesale rates on and after November 1, 1942. The order does not prescribe rates for gas sold directly to industrial consumers, and does not prevent petitioners from increasing or decreasing such rates at will. In addition, the rate order in question is an interim order, subject to pragmatic adjustments as need or justification is shown.

4. Certain incidental contentions of petitioners may be dealt with briefly. It is urged that in taking actual legitimate cost rather than "reproduction cost new" or "market value" of the facilities devoted to production and gathering of gas, the Commission exercised "jurisdiction over production and gathering of natural gas in violation of the Natural Gas Act" (Pet. 2). The argument as developed in the petition (Pet.

21–23) is substantially the same as that advanced in *Federal Power Commission* v. *Hope Natural Gas Company*, 320 U. S. 591, 614, n. 25. In there rejecting such contentions, this Court pointed out that the ascertainment of the cost of producing and gathering natural gas, "like the provisions for operating expenses, is essential to the rate-making function as customarily performed in this country." Further discussion of that question here seems unnecessary.

It is also contended (Pet. 27–28) that the Commission should have included in the rate base the cost of construction work in progress and future capital expenditures. This Court ruled in *Federal Power Commission* v. *Natural Gas Pipeline Co.*, 315 U. S. 575, 587, that "the refusal to include in the rate base capital expenditures not yet made can not involve confiscation." Moreover, petitioners follow the policy of capitalizing interest during construction (R. I, 275–276), and it would be a duplication to allow a return on such expenditures during the construction period. In any event, consideration of future expenditures to serve new business would also have required consideration of the additional revenues which will result therefrom, and as to this petitioners failed to adduce any evidence (R. I, 28).

CONCLUSION

The decision below fully accords with those of this Court in the *Hope* and *Natural Gas Pipeline* cases, and there is no substance to the alleged conflict of decisions. We respectfully submit that

the petition for a writ of certiorari should be denied.

CHARLES FAHY,
Solicitor General.
FRANCIS M. SHEA,
Assistant Attorney General.
DAVID L. KREEGER,
Special Assistant to the Attorney General.
PAUL A. SWEENEY,
Attorney.

For Federal Power Commission:
CHARLES V. SHANNON,
General Counsel,
HARRY S. LITTMAN,
Assistant General Counsel.

For City of Detroit, Michigan:
PAUL E. KRAUSE,
Corporation Counsel,
JAMES H. LEE,
Assistant Corporation Counsel.

For County of Wayne, Michigan:
WILLIAM E. DOWLING,
Prosecuting Attorney,
HAROLD GOODMAN,
Special Assistant Prosecuting Attorney.

For Michigan Consolidated Gas Company:
PARK CHAMBERLAIN,
HENRY MONTGOMERY,
A. V. MCREE.

For Michigan Public Service Commission:
HERBERT J. RUSHTON,
Attorney General,
JAMES W. WILLIAMS,
Assistant Attorney General.

AUGUST 1944.

APPENDIX

The pertinent provisions of the Natural Gas Act of 1938, 52 Stat. 821, et seq. (15 U. S. C. 717) are as follows:

SEC. 1. (a) As disclosed in reports of the Federal Trade Commission made pursuant to Senate Resolution 83 (Seventieth Congress, first session) and other reports made pursuant to the authority of Congress, it is herby declared that the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof in interstate and foreign commerce is necessary in the public interest.

(b) The provisions of this Act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

* * * * * *

SEC. 5. (a) Whenever the Commission, after a hearing had upon its own motion or upon complaint of any State, munici-

pality, State commission, or gas distributing company, shall find that any rate, charge, or classification demanded, observed, charged, or collected by any natural-gas company in connection with any transportation or sale of natural gas, subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory, or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order: *Provided, however,* That the Commission shall have no power to order any increase in any rate contained in the currently effective schedule of such natural gas company on file with the Commission, unless such increase is in accordance with a new schedule filed by such natural gas company; but the Commission may order a decrease where existing rates are unjust, unduly discriminatory, preferential, otherwise unlawful, or are not the lowest reasonable rates.

* * * * *

SEC. 6. (a) The Commission may investigate and ascertain the actual legitimate cost of the property of every natural-gas company, the depreciation therein, and, when found necessary for rate-making purposes, other facts which bear on the determination of such cost or depreciation and the fair value of such property.

* * * * *

SEC. 19 (b) Any party to a proceeding under this Act aggrieved by an order issued

by the Commission in such proceeding may obtain a review of such order in the circuit court of appeals of the United States for any circuit wherein the natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be served upon any member of the Commission and thereupon the Commission shall certify and file with the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and condi-

tions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings, which if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

GOVERNMENT PRINTING OFFICE : 1944